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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 BRUCE F. BICKOFF,

11 Plaintiff,

12 vs.

13 WELLS FARGO BANK, N.A.,

14 Defendant.

CASE NO. 14CV1065 BEN (WVG)

**ORDER GRANTING WELLS
FARGO'S UNOPPOSED MOTION
FOR LEAVE TO FILE A THIRD
PARTY COMPLAINT**

[Docket No. 17]

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16 Defendant Wells Fargo Bank, N.A. moves to file a third-party complaint against
17 Remy Bickoff. (Docket No. 17.) Plaintiff Bruce Bickoff does not oppose the motion.
18 For the reasons set forth below, the motion is **GRANTED**.

19 **BACKGROUND**

20 Remy Bickoff is Plaintiff Bruce Bickoff's son and prior counsel in this action.¹
21 Plaintiff brought this action asserting numerous claims arising out of the denial of
22 permanent financing following a construction loan and the eventual foreclosure and
23 sale of the property at a trustees sale.² Wells Fargo asserts that it recently discovered
24 through the discovery process that Remy Bickoff entered into a profit sharing
25 agreement for the purchase of the property that is the subject of this action while he
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27 ¹New counsel substituted in as counsel for Plaintiff before this motion was filed.

28 ²The Court is not making any findings of fact or attempting to describe the
entirety of Plaintiff's allegations.

1 was counsel for Plaintiff. The property was sold at a trustee sale that Remy Bickoff,
 2 as counsel for Plaintiff, had previously sought to enjoin in this action. The property
 3 sold for one cent more than the amount Plaintiff owed Wells Fargo, \$3,289,416.83.
 4 Wells Fargo and the party Remy Bickoff contracted with for the purchase of the
 5 property were the only bidders. The property was then sold for \$4,246,500. Remy
 6 Bickoff's portion of the profit from the sale was approximately \$350,000.

7 DISCUSSION

8 Wells Fargo seeks to pursue claims for equitable contribution, fraudulent
 9 concealment, and declaratory relief. Wells Fargo alleges Remy Bickoff failed to
 10 disclose his breaches of ethical and fiduciary duties and his intention to bid on the
 11 property when he sought information about the trustee's sale. Wells Fargo asserts it
 12 could have prevented the wrongful purchase, effectuated through the void purchase
 13 sale agreement, had it known of Remy Bickoff's breaches. This would have allowed
 14 Wells Fargo to purchase the property at the trustee's sale. Plaintiff seeks to recover the
 15 lost equity in the property from Wells Fargo, but Wells Fargo asserts that Remy
 16 Bickoff's conduct caused the loss of equity and the profit Plaintiff seeks to recover
 17 against Wells Fargo is in his former counsel's pocket.

18 Federal Rule of Civil Procedure 14 allows for the filing of a "complaint on a
 19 nonparty who is or may be liable to it for all or part of the claim against it." Fed. R.
 20 Civ. P. 14(a)(1). "The purpose of this rule is to promote judicial efficiency by
 21 eliminating the necessity for the defendant to bring a separate action against a third
 22 individual who may be secondarily or derivatively liable to the defendant for all or part
 23 of the plaintiff's original claim." *Sw. Adm'rs, Inc. v. Rozay's Transfer*, 791 F.2d 769,
 24 777 (9th Cir. 1986). Wells Fargo has met the derivative liability requirement of Rule
 25 14(a) because the claims of the proposed third-party complaint "attempt[] to transfer
 26 [a portion of] the liability asserted against [Wells Fargo] by the original plaintiff to the
 27 third party defendant," Remy Bickoff. *Am. Zurich Ins. Co. v. Cooper Tire & Rubber*
 28 *Co.*, 512 F.3d 800, 805 (2nd Cir. 2008) (noting this essential criterion).

1 A third-party plaintiff must obtain leave of court to file a third-party complaint
2 unless it is filed within 14 days of the filing of the original answer. Fed. R. Civ. P.
3 14(a)(1). District courts have recognized a number of factors that may be relevant in
4 determining whether to allow the filing of a third-party complaint, including: "(1)
5 prejudice to the original plaintiff; (2) complication of issues at trial; (3) likelihood of
6 trial delay; and (4) timeliness of the motion to implead." *Irwin v. Mascot*, 94 F. Supp.
7 2d 1052, 1056 (citing *Somportex Ltd. v. Phila. Chewing Gum Corp.*, 453 F.2d 435, 439
8 n.6 (3rd Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972)).

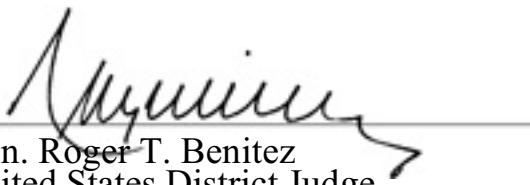
9 Plaintiff has had an opportunity to oppose this motion and has not raised any
10 issues with regard to prejudice from the filing of the third-party complaint, nor is the
11 Court aware of any prejudice Plaintiff would suffer. It also does not appear there is any
12 likelihood of delay in the trial of this action. This motion comes long after the action
13 was initially filed, however, as Wells Fargo explains, it only became aware of Remy
14 Bickoff's conduct through discovery and the only delay in bringing this motion after
15 the discovery was to pursue a stipulation from Plaintiff. Given the Court encourages
16 parties to attempt to resolve issues when possible, Wells Fargo will not be penalized
17 for that effort. These factors all weigh in favor of allowing the filing of the third-party
18 complaint.

19 CONCLUSION

20 Wells Fargo's motion is **GRANTED**. Wells Fargo may file its third-party
21 complaint within five days after the filing of this order.

22 **IT IS SO ORDERED.**

23
24 DATED: April 10, 2015

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27 Hon. Roger T. Benitez
28 United States District Judge